

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Leslie S. Marco et al.) Group: 3721
Serial No.: 10/681,524)
Filed: October 8, 2003)
Title: TOP LIFT CARRIER AND METHOD OF) Examiner: Tawfik, Sameh
MANUFACTURE THEREFOR)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
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Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This Pre-Appeal Brief Request for Review is being filed concurrently with a Notice of Appeal from the Examiner's decision dated February 28, 2007, finally rejecting claims 1-13, which are all of the claims that remain pending in this application. Claims 1-13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,868,659 (Slomski) in view of U.S. Patent 5,487,465 (Broskow). The review panel is requested to review the legal and factual basis of the rejection for the reasons stated below.

The Teachings of the Prior Art On Which The Rejection Is Based

Slomski clearly and unequivocally teaches punching the container engaging portion and the handle portion of a carrier separately, before attaching the carrier and the handle sheets together. The Examiner has acknowledged this. For a more detailed discussion, the panel members are directed to the Amendment filed January 12, 2007, on page 5, paragraph 3. The process for making the carrier of Slomski is described in detail in column 5 of the Slomski patent. It is clear and unequivocal that the handle portion and the carrier portion are formed separately and independently, and that after each is formed, the two portions are connected together.

Broskow teaches a carrier "...formed by joining two separate sheets of plastic material together at the seam or joined portion 26." Broskow also teaches that a single sheet can be used "by folding the sheet in half and applying a layer of plastic or otherwise fusing the sheets together to form the joined portion 26" (column 3, lines 40-46). For a more detailed discussion thereof, the panel members are directed to the paragraph beginning at the bottom of page 4 in the Amendment filed January 12, 2007. Clearly and unequivocally the carrier of Broskow is formed from two sheets or from a folded sheet, but in either case a sheet includes both a handle portion and a container engaging portion, with the handle portion having apertures different from the apertures of the container engaging portion. If two sheets are used, each sheet includes both a handle portion and a container engaging portion. If one folded sheet is used, a handle portion and a container engaging portion are formed in the sheet.

The Single Rejection Based On Slomski and Broskow Ignores Claim Limitations

Claim 1 contains limitations clearly different from the teachings of Slomski or Broskow alone or in combination. Claim 1 recites a method that includes steps of positioning a handle sheet on a carrier sheet, connecting the sheets, and **"forming a container holding portion only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment after said steps of positioning and connecting..."**. Accordingly, it occurs after the two sheets are connected together. Since forming a handle portion is performed **"simultaneously with forming the first row of apertures"** it is clear that all punching occurs after the two sheets are connected together. Claim 1 further recites, **"forming a handle portion only in the handle sheet, including forming holes in the handle sheet simultaneously with forming the first row of apertures, the holes and the first row of apertures formed in substantially the same configurations. "**

Positioning and connecting two sheets together, and punching a handle portion and a carrier portion thereafter are entirely contrary to the teaching of Slomski '659. For this, the Examiner relies on the teaching of Broskow. However, Broskow also teaches that each sheet is used to form one half of a double layer handle portion and a separate, outwardly depending carrier portion from the handle portion. Accordingly, there is not a "handle sheet and a carrier sheet" as

recited in claim 1. Furthermore, there is no instruction or suggestion in either of the references as to how discrete sheets, one sheet only for the carrier and a second sheet only for the handle, can be first attached together and then punched in a manner such that a container holding portion is formed only in the carrier sheet to include apertures on both sides of the line of attachment, and a handle portion is formed only in the handle sheet. Slomski teaches that when separate sheets are provided for the carrier and handle each must be punched separately before attachment, and Broskow teaches that when two sheets are first attached together before punching each sheet then forms a part of the handle and a part of the carrier such that there is not a discrete handle sheet and a discrete carrier sheet as required by claim 1. Neither reference teaches or suggests how the two very different processes taught by Slomski and Broskow can be merged.

Neither reference alone or in combination teaches forming a carrier by attaching a discrete handle sheet and a discrete carrier sheet one to the other before forming the container receiving apertures and the handle configuration. Neither reference teaches or suggests forming the handle portion and the carrier portion with similar shaped holes and apertures. Neither reference alone or in combination teaches or suggests a method for making a carrier whereby two sheets are first attached, then punched while forming the handle portion only in one of the sheets and the carrier portion only in the other of the sheets.

Independent claim 8 includes even more limitations not found in the combination of references cited by the Examiner. In addition to limitations similar to those discussed above with respect to claim 1, independent claim 8 further requires that the sheets are connected along spaced **first and second lines of attachment**, with subsequent steps of;

"removing a strip of the handle sheet between the lines of attachment, leaving a first handle portion of the handle sheet outwardly from the first line of attachment and a second handle portion of the handle sheet outwardly from the second line of attachment;

"forming a first row of container receiving apertures in the carrier sheet outwardly from the first line of attachment and simultaneously forming holes in the first handle portion of the handle sheet similarly shaped to the first row of apertures;

“forming a second row of apertures in the carrier sheet between the first and second lines of attachment; and

“forming a third row of container receiving apertures in the carrier sheet outwardly from the second line of attachment and simultaneously forming holes in the second handle portion of the handle sheet similarly shaped to the third row of apertures.”

Nothing in either reference, alone or in combination teaches connecting a discrete handle sheet and a discrete carrier sheet along spaced first and second lines of attachment, and in the space between the lines of attachment removing a strip of the handle sheet and forming a row of apertures in the carrier sheet. This is not the mere duplication of the essential working parts of a device as suggested by the Examiner. Claim 8 recites a method of forming a three row carrier in which two handle portions are connected to a carrier sheet, with one of the handle portions being connected to the carrier sheet between the first and second rows of apertures, and the second handle portion being connected to the carrier sheet between the second and third rows of container receiving apertures. In discussing these limitations of claim 8 the Examiner generally refers to Fig. 4 of Slomski; however, nowhere does of Slomski show three rows of container receiving apertures or two spaced lines of attachment with a row of container receiving apertures there between. Neither reference teaches a method whereby first and second handle portions are connected to different parts of a three row carrier, one connected between the first and second rows of container receiving apertures and a second connected between the second and third rows of container receiving apertures. The Examiner's rejection fails to meet numerous limitations recited in the method of claim 8, and the general reference to the drawings of the prior art does not suffice as a basis for the rejection.

The present invention recites specific sequences of steps different from the sequences taught by Slomski and Broskow, alone or in combination, to produce a carrier having new and different features and construction. The rejection based on Slomski and Broskow ignores the sequence of steps and treatments of materials as recited in the pending claims, and overlooks the clear and unequivocal differences from the methods, procedures and steps taught by the prior art.

Accordingly, it is submitted that the rejection is not properly supported by the cited prior art, is therefore insufficient, and should be withdrawn.

Further, is respectfully submitted that the Examiner's analysis with respect to at least some of the dependent claims fails to meet the limitations of the claims. For a complete discussion of the inadequacies of the rejections of the dependent claims, the panel members are directed to the arguments found on pages 8 and 9 of the Amendment filed January 12, 2007.

For the foregoing reasons, Applicants submit that no combination of the cited references teaches, discloses or suggests the subject matter of the pending claims, and that the Examiner's conclusions about the teachings of Slomski and Broskow are not proper, and do not meet the limitations recited in the pending claims. The review panel is requested to remove all rejections and indicate the allowance of all pending claims. Consideration and allowance are respectfully requested.

In the event Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Respectfully submitted,

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